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5 IN THE UNITED STATES DISTRICT COURT  
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7 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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9 PADAM KUMAR KHANNA,  
10 Plaintiff,  
11 v.  
12 JAGJIT SINGH RANDHAWA, ET AL.,  
13 Defendants.

No. C 07-05136 CW

ORDER ADOPTING  
MAGISTRATE JUDGE'S  
REPORT AND  
RECOMMENDATION RE:  
PLAINTIFF'S MOTION  
FOR ENTRY OF  
DEFAULT, OVERRULING  
PLAINTIFF'S  
OBJECTIONS, DENYING  
MOTION FOR DEFAULT  
JUDGMENT AND  
DISMISSING COMPLAINT  
WITH LEAVE TO AMEND

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17 On December 4, 2007, United States Magistrate Judge Edward M.  
18 Chen issued a report and recommendation denying the motions for  
19 default judgment of pro se Plaintiff Padam Kumar Khanna (Docket  
20 Nos. 4 and 5). On December 14, 2007, Plaintiff filed an objection  
21 to Judge Chen's report and recommendation and moved for the recusal  
22 of Judge Chen.

23 The Court has reviewed Plaintiff's objections and Judge Chen's  
24 report and recommendation and finds that Plaintiff's objections are  
25 without merit.

26 First, Plaintiff's request to recuse Judge Chen is not well-  
27 taken. "The standard for judging the appearance of partiality  
28 requiring recusal under 28 U.S.C. § 455 is an objective one and

1 involves ascertaining 'whether a reasonable person with knowledge  
2 of all the facts would conclude that the judge's impartiality might  
3 reasonably be questioned.'" Preston v. United States, 923 F.2d  
4 731, 734 (9th Cir. 1991). Recusable bias must be both personal and  
5 extrajudicial. United States v. Carignan, 600 F.2d 762, 763-64  
6 (9th Cir. 1979). The source of bias must be extrajudicial because  
7 the "recusal statute was never intended to enable a discontented  
8 litigant to oust a judge because of adverse rulings made, for such  
9 rulings are reviewable otherwise . . ." Ex parte American Steel  
10 Barrel Co., 230 U.S. 35, 44 (1913). Plaintiff's charge that Judge  
11 Chen is biased is based upon Judge Chen's actions in his role as  
12 adjudicator of Plaintiff's case. Because the alleged bias does not  
13 arise from an extrajudicial source, Plaintiff's request for recusal  
14 must be DENIED.

15 Second, Plaintiff complains that Judge Chen only addresses  
16 his claims of perjury against Defendants Jagjit Singh Randhawa and  
17 Baljit Randhawa and does not address his conspiracy allegations  
18 against them. However, in his report and recommendation, Judge  
19 Chen noted that "the only cause of action explicitly stated against  
20 the Randhawas was 'violation of 18 U.S.C. § 1621 -- Perjury.'"  
21 Judge Chen acknowledged that Plaintiff implied, in his motion for  
22 default judgment, that the Randhawas conspired with the State Bar  
23 defendants to deprive him of his civil rights. However, Judge Chen  
24 reiterated that, because a conspiracy claim was not formally plead  
25 in the complaint, the perjury claim was the only one that was at  
26 issue in the motion for default.

27 The Court finds Judge Chen's report and recommendation  
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1 correct, well-reasoned and thorough and adopts it in every respect.

2 Plaintiff's motions for default are denied.

3 As Judge Chen noted, Plaintiff's complaint fails to state a  
4 claim against Defendants and it must be dismissed. Plaintiff will  
5 be given an opportunity to file an amended complaint against  
6 Defendants to allege different causes of action against them, if he  
7 truthfully can do so. If he chooses to do so, Plaintiff must file  
8 an amended complaint within twenty days from the date of this  
9 order. If Plaintiff fails to file the amended complaint within  
10 this time, his case against the Randhawas will be dismissed for  
11 failure to prosecute.

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13 IT IS SO ORDERED.

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15 Dated: 1/11/08

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CLAUDIA WILKEN  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

KHANNA et al,  
Plaintiff,  
v.  
RANDHAWA et al,  
Defendant

Case Number: CV07-05136 CW

## **CERTIFICATE OF SERVICE**

RANDHAWA et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 11, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Padam Kumar Khanna  
2600 10th Street, # 407  
Berkeley, CA 94710

Dated: January 11, 2008

Richard W. Wieking, Clerk  
By: Sheilah Cahill, Deputy Clerk